

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ELECTRONICALLY FILED
DOC #: _____
DATE FILED: October 16, 2017

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JAN NUSBAUM,

Plaintiff,

-v-

E-LO SPORTSWEAR LLC,

Defendant.
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17-cv-3646 (KBF)

ORDER

KATHERINE B. FORREST, District Judge:

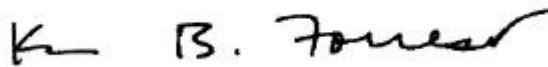
The Court has reviewed plaintiff's opening motion under Fed. R. Civ. P. Rule 12(c) for judgment on the pleadings. (ECF No. 27.) The Court does not believe that Exhibits A, B, and C would be considered incorporated by reference under Second Circuit precedent. Accordingly, the Court converts that motion to a Rule 56 motion for summary judgment. Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."). This conversion in no way reflects the Court's view as to the strength of the motion.

Defendant may file any factual materials it believes are relevant to respond to the arguments raised by plaintiff **not later than November 6, 2017**. Plaintiff

may submit a reply that responds to those materials **not later than November 20, 2017.**

SO ORDERED.

Dated: New York, New York
October 16, 2017

A handwritten signature in black ink, appearing to read "K. B. Forrest", is written above a horizontal line.

KATHERINE B. FORREST
United States District Judge